

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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NATIONWIDE AFFINITY INSURANCE COMPANY
OF AMERICA AS SUBROGEE OF KELLY BURT
AND BRITTINI BURT,

Plaintiff,

COMPLAINT

-against-

Docket No.: 5:16-CV-880 (LEK/ATB)

UNITED STATES OF AMERICA,

Defendant.
-----X

**Plaintiff, NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA AS
SUBROGEE OF KELLY BURT AND BRITTINI BURT, by their attorneys,
GIALLEONARDO, FRANKINI & HARMS, as and for their complaint against defendant,
alleges upon information and belief:**

INTRODUCTION

1. This is an action brought by the plaintiff, Nationwide Affinity Insurance Company of America as subrogee of Lindsay Hill, to recover the sum of \$4,817.43, said sum being the amount the plaintiff subrogor sustained in damage/loss of use of his automobile caused by the negligence of the defendant(s), its servants, agents and/or employees on or about December 14, 2015.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is founded upon 28 U.S.C. 1346(b) and 28 U.S.C. §2671-2680 as the United States Postal Service is being sued herein for actions committed by persons acting on behalf of the defendant, the United States of America.
3. Venue is properly place in the United States District Court for the Northern District of New York pursuant to 28 U.S.C. 1391(a)(2), since a substantial number of the events or omissions giving rise to the claims herein occurred within this District or were committed here and the property that is the subject of the action is situated within this District.

PARTIES

4. The plaintiff, Nationwide Affinity Insurance Company of America, conducts business at 225 Greenfield Parkway, Suite 200, Liverpool, NY 13088.
5. The defendant, UNITED STATES OF AMERICA, conducts business at an office located at 1200 Main Place Tower, Buffalo, New York 14202, through the federal agency, United State Postal Service.

FACTS

6. On December 14, 2015, a vehicle owned and operated by the plaintiff's subrogor was involved in an accident with a United States Postal Service vehicle owned by the defendant, United States of America. The accident occurred at or near the intersection of Hoosick Street and 8th Street, City of Troy, County of Rensselaer, State of New York.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST
UNITED STATES OF AMERICA

7. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs of this Verified Complaint numbered "1" through "6" inclusive, with the same force and effect as though fully set forth herein at length.
8. That during the time hereinstated and hereinafter mentioned, the plaintiff was and still is an Insurance Company duly licensed by the New York State Department of Insurance.
9. That upon information and belief, and at all times hereinafter mentioned, the UNITED STATES POSTAL SERVICE was and is a duly constituted department of the defendant, the United States Government.
10. That upon information and belief, at all times hereinafter mentioned, defendant UNITED STATES OF AMERICA through its agent, UNITED STATES POSTAL SERVICE, was the registered owner of a motor vehicle bearing New York State license plate number FZR9746.

11. The aforementioned collision was caused solely by reason of the negligence, carelessness, and/or recklessness of the driver, Jeffery Korman.
12. At the time of the aforementioned collision, the driver, Jeffery Korman, was an UNITED STATES POSTAL SERVICE employee, member, servant and/or agent of the defendant, the UNITED STATES OF AMERICA, who was acting within the scope of his employment, service and/or assignment.
13. Defendant, the UNITED STATES OF AMERICA, is therefore responsible for the negligence of the driver, Jeffery Korman.
14. The plaintiff's subrogor sustained property damage and loss of use of its vehicle in the sum of \$4,817.43 caused wholly and solely by reason of the carelessness and negligence of the defendant, its servants, agents and/or employees on or about December 14, 2015.
15. Plaintiff's subrogee, Nationwide Insurance Company of America, reimbursed its subrogor for the aforementioned damages, pursuant to a collision insurance policy.
16. Prior to the commencement of this action, plaintiff served the United States Postal Service with proper notice of this claim by filing a Standard Form 95 pursuant to the Tort Claims Act, by certified mail dated January 27, 2016. On or about February 25, 2016 the Plaintiff received a demand for reimbursement for the damage to the Defendant's motor vehicle in reply to the Plaintiff's Notice of Claim.
17. This suit is being filed in the appropriate United States District Court within the statutory time frame as less than six months has passed from the time plaintiff was served with the reply from the Defendant.

WHEREFORE, plaintiff demands judgment against the defendant(s) for the sum of \$4,817.43, together with interest from December 14, 2015, along with costs and disbursements of this action.

Dated: Mineola, New York
July 18, 2016

Yours, etc.,

GIALLEONARDO, FRANKINI & HARMS



By: _____

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